



# **North Carolina General Assembly**

## **ENVIRONMENTAL REVIEW COMMISSION MINUTES**

November 12, 2009

The Environmental Review Commission met Thursday, November 12, 2009 in Room 544 of the Legislative Office Building. Co-Chairman Robert Atwater presided, calling the meeting to order at 9:06 a.m.

### **Welcome and Attendance**

Also present with Co-Chairman Atwater was Co-Chairman Daniel Clodfelter, Co-Chairman Lucy Allen, Co-Chairman Pryor Gibson, Senator Charlie Albertson, Senator Stan Bingham, Senator James Forrester, Senator Ellie Kinnaird, Representative Pricey Harrison, Representative Cullie Tarleton, Representative Ruth Samuelson, and Representative Edith Warren. Advisory members Senator Fletcher Hartsell and Representative Russell Tucker were present. Staff present was Commission Counsels Jeff Hudson, Jennifer McGinnis, Tim Dodge and Susan Iddings. Commission Analyst Jennifer Mundt and Committee Assistant Jessica Kozma Proctor were also present.

Membership, staff and outside parties were notified of the meeting electronically November 4. Signed visitors' sheets are attached to these minutes.

### **Report to the Commission and Explanation of Agenda Items**

Co-Chairman Atwater called on Mr. Hudson to review the day's agenda. Mr. Hudson began saying that because a majority of members queried said they would prefer to meet at 10 a.m. rather than nine, future meetings would begin at ten. He continued saying all presentations would be posted on the Environmental Review Commission website, and then reviewed items on the agenda.

Following Mr. Hudson's comments, Co-Chairman Atwater thanked staff and sergeants-at-arms for their service to the Commission. He then called for comments from his fellow chairmen.

Co-Chairman Clodfelter was recognized. He said that he recently traveled to Germany to study the country's efforts with climate change. The delegation was from Ohio, Delaware and Michigan. "Intimidating" was how he described his discoveries on the trip. He said Germany has accomplished goals with regard to climate change in five years that "people in the United States claim will take 20 years" to accomplish.

Senator Bingham was then recognized. He said he looked forward to achieving goals with the Commission this Interim.

### **Report on recent federal actions related to climate change**

Co-Chairman Atwater then recognized Mr. Victor Flatt, the Tom and Elizabeth Taft Distinguished Professor of Environmental Law, with the School of Law at the University of North Carolina at Chapel Hill.

Mr. Flatt thanked Commission members for the invitation to report to the Commission, and said the Commission showed foresight as what happens at the federal level concerning climate change does indeed have an impact on the State. A copy of his presentation is included in the minutes and uploaded to the Commission's webpage at [www.ncleg.net](http://www.ncleg.net).

Mr. Flatt reviewed two current pieces of federal climate change legislation, the Waxman-Markey Act (ACES) in the House and the Boxer-Kerry Act in the Senate. ACES passed the House in 2009 and is currently awaiting passage in the Senate. The Boxer-Kerry Act is similar to ACES and is still awaiting passage in the Senate. Mr. Flatt said the two bills "rounded out" what was currently important with regard to climate change. He noted that greenhouse gas emission caps are an important component of both pieces of legislation. For both ACES and the Boxer-Kerry Act there is a 17 and 20 percent reduction requirement, respectively, with a total 83 percent reduction by 2050.

He then moved on to discuss allocations of greenhouse gas emissions would be made in both bills. Allocations would be sold in the open market, with 85 percent of the rights to emit being given away on the open market. Both bills scale reductions and emissions up to year 2050.

Regarding industry allocations, Mr. Flatt explained that there would be 35 percent lottery for the utility sector, with the latest version of legislation giving a percentage of the allocations to rural electric cooperatives. Also, there would be a 15 percent allocation for carbon-sensitive industries, such as steel and cement, that would be required to achieve a 2 percent reduction every year. A three percent allocation would go to auto makers, two percent to oil refineries, and two percent for carbon capture and storage technology between the years 2014 to 2017. All industries would have reduction schedules in the legislation.

Regarding allocation to state and other funds, 10 percent would go for states to create renewable energy and efficiency investment over a three year period from 2012 to 2015. Mr. Flatt also reported that five percent would be used for tropical deforestation projects. Two percent will be used for domestic adaptation to climate change between 2012 and 2021, increasing to four percent between 2022 and 2026 and eight percent in 2027. A 1.5 percent allocation for programs helping home heating and propane users, with a goal to reduce to zero emissions between 2026 and 2030 is also included.

Under the current distribution formula, individual southern states would receive roughly even amounts in comparison to each other. Mr. Flatt said that in the ACES legislation there is a 6-to 20 percent reduction of greenhouse gas emissions to 2020, with the Boxer-Kerry legislation similar but probable to change in its final draft. For ACES, all renewable energies would apply. This includes: wind, solar, geothermal, renewable, certain biogas and biofuels, "qualified" hydropower, among others.

Co-Chairman Atwater thanked Mr. Flatt and told the Commission to please keep their questions brief in order to remain on schedule.

Senator Albertson asked what type of feed operation regulation might occur. Mr. Flatt said that there was proposed legislation for monitoring large feed operations. Under Boxer Kerry, however, the emphasis is different, and that has slowed down the EPA's work to regulate such operations. Senator Bingham asked about marine and tidal energy. Mr. Flatt said there were ongoing projects in Portugal and research in Alaska, though he was unsure about any studies on the Eastern Seaboard.

Co-Chairman Allen said she had recently returned from China and was interested in work between the United States and China. She noted that some Chinese corporations have reduced their emissions, including Kodak, due to public outcry regarding China's lack of pollution controls.

### **Report on the U.S. Environmental Protection Agency's reconsideration of the ground level ozone standard**

Co-Chairman Atwater recognized Mr. Keith Overcash the Director of the Division of Air Quality (DAQ) with the Department of Environment and Natural Resources (DENR). A copy of the entire presentation on air quality from Mr. Overcash and his staff may be found online at the Environmental Review Commission website at [www.ncleg.net](http://www.ncleg.net). Mr. Overcash began thanking Co-Chairman Atwater and reviewing his staffs' participation in the day's agenda.

He began reviewing a history of ozone standards "of where we came from." The first ozone standards were established in 1971, with a one-hour standard of .08 parts per million. Over the past 39 years that standard has ebbed and flowed. In 1979, the standard was increased to .12 parts per million, and would remain as such until being reduced back to .08 ppm in 1997. In 2008, the standard was slightly reduced to .075 ppm.

Mr. Overcash then explained "non-attainment" with regard to ozone regulation. The Environmental Protection Agency determined it wanted individual states to develop plans demonstrating what control measures were needed to maintain federal ozone standards. Items considered for these plans included transportation conformity and new source reviews on industrial and other sources. Mr. Overcash then reviewed several maps showing ozone thresholds across the State. The maps projected future controls and potential ozone hazards for the State. He noted that increasing controls on industry could pose issues for incoming industries in higher ozone areas.

In completing his presentation, Co-Chairman Atwater called for discussion among members. Senator Kinnaird asked if ozone came only from vehicles. Mr. Overcash answered that it did not, but from various sources. Senator Kinnaird followed up asking about new power plant requirements. Mr. Overcash answered that (DENR officials) felt that ozone emissions dropped in the State because of tighter controls on power plants.

Representative Warren asked what was causing the amount of attainment in Pitt County. Mr. Overcash answered that it was primarily motor emissions. Representative Harrison said that she learned this summer that not all smokestacks were cleaned under the Clean Smokestacks Act, and that she appreciated that Progress Energy had converted on smokestack. She then asked if Mr. Overcash knew how many smokestacks were

“unscrubbed.” Mr. Overcash answered that he did know and that he would provide the information for her after the meeting.

Discussion quelled, and Co-Chairman Atwater called on the next speaker.

### **Report on ozone control strategy options**

Co-Chairman Atwater recognized Ms. Sheila Holman, Deputy Director of DAQ in DENR. Ms. Holman thanked Co-Chairman Atwater as she approached the podium. Her presentation is included in the same presentation as for Mr. Overcash, and begins on Slide 19.

Ms. Holman began noting that although significant progress was accomplished over the past decade to reduce ozone levels, she would not have all the answers regarding the subject in her presentation. She noted reductions occurred in the utility sector (Clean Smokestacks Act), in industrial boilers, in tighter regulations of federal engine and fuel standards, the State vehicle inspections program, and non-road standards. She then moved to a chart showing ozone trends in North Carolina since 1990. This chart showed a peak in the late 1990s to early 2000s, following with a steep, steady and sharp decline. She noted that times with higher heat showed higher ozone levels until recently. She then reviewed the cause of ground level ozone production: Oxides of oxygen combine with volatile organic compounds and are nurtured by a strong spring of summer and result in ozone. This type of ozone can create health hazards, making it a concern to State officials.

Continuing her presentation, Ms. Holman noted that in metrolina, vehicle emissions make up for roughly 50 percent of ozone emissions; with off-road vehicles contributing at 25 percent. Utilities and industrial sectors make up the remaining percentages. Noting future emissions reduction, Ms. Holman reported that on-road vehicles, including light and heavy, would see reductions, as well as large non-road diesel engines, locomotive engines and commercial diesel engines. To note; some 54 percent of on-road mobile NO<sub>x</sub> emissions come from large duty vehicles and 46 percent from light duty vehicles.

Ms. Holman completed her report and Co-Chairman Atwater called for discussion. Senator Kinnaird asked about the success of hybrid vehicles to lower emissions. Ms. Holman said hybrid vehicles do lower emissions, and would become more important in the future. With little more discussion, the Co-Chairman called on the next speaker.

### **Report on the Status of North Carolina’s Idle Reduction Rule**

Co-Chairman Atwater recognized and welcomed Mr. Michael Abraczinskas, Supervisor of the Rules Development Branch in DAQ (DENR). Mr. Abraczinskas’ presentation, beginning on Slide 31, is also part of the larger presentation introduced by Mr. Overcash and is attached to the minutes or found at that Commission’s website at [www.ncleg.net](http://www.ncleg.net). He continued that Ms. Holman introduced him nicely; having outlined most of the “low lying fruit” of the day’s agenda. He said that his division was looking at a mobile reduction emissions program that could be cost effective to the heavy duty

motorists. The goal of this program is to eliminate unnecessary idling of heavy duty vehicles. He acknowledged that some idling is necessary.

In reducing idling in heavy duty vehicles, one may also reduce the carbon footprint, he said. The rule requirements are simple, he noted. Operators are allowed five minutes of idling in a 60 minute period. An exemption is made for rigs with sleeper berth cabs, with the exemption lasting until 2011. He estimated that there could be up to a nine million gallon reduction of fuel per year as well as a 1300 ton yearly reduction of nitrogen oxides.

Mr. Abraczinskas then discussed idle reduction for sleeper berths. One significant option for operators of such rigs is to install an Auxiliary Power Unit (APU). According to his report, with a \$10,000 investment in an APU, the payback period is between five and thirteen months depending on the costs of diesel fuel. In reviewing the rulemaking process, DAQ held two stakeholder meetings before starting the official rulemaking process. Feedback was a focal point of the original rules, including the sunset of the current sleeper berth exemption. During the rulemaking process, five written comments were received during an official 60-day comment period and the EMC unanimously approved the rule. The rules were again approved by the Rules Review Commission after which time 18 letters of objection were received calling for legislative review. Again, of concern was the sunset of sleeper berths being too quick for heavy rig operators.

Mr. Abraczinskas finished his report. Co-Chairman Gibson thanked him and called for Commission discussion. He then recognized Representative Tarleton.

Representative Tarleton began saying that “charity begins at home,” then telling of a recent constituent concern about State motor vehicles being left to idle. He then asked what the State could do about this. He then followed up asking how to communicate this to departments. Mr. Abraczinskas answered that last year a general emissions reduction program began for all State departments, and a link to the idle reduction page is currently on his Department’s website. The Division has also printed signs for areas where motorists would be inclined to idle in their vehicles. Senator Bingham was recognized. He said he runs trucks for business and suggested that truck stops have plug-ins to keep engines and drivers warm. He added that he thought a \$10,000 investment might be rather steep for many truck drivers, but if they had a place to drive up and plug their trucks in, truckers would be receptive. Mr. Abraczinskas said there were several places in the State that had the ability for truckers to plug in.

Senator Clodfelter commented if the real goal was to have voluntary compliance, it seems that could be done without adopting a rule, but rather using education and outreach to achieve this.

### **Report on diesel emission reduction grants**

Co-Chairman Atwater recognized Ms. Heather Hildebrandt an Environmental Engineer with DAQ in DENR. Her presentation is attached to the larger DAQ presentation and begins at Slide 41. She reviewed diesel grants and funding for the State.

Ms. Hildebrandt began with the fuel tax that targets all mobile sectors with an emphasis on diesel products over recent years. Also, funding for grants comes from the Diesel Emissions Reduction Act (DERA), which took its 2008 and 2009 State allocations

and used this into a grant call for projects. Both a competitive award and another grant to replace diesel engines exist for qualified participants.

Grant opportunities under the American Recovery and Reinvestment Act include:

- NC Diesel Emissions-Economic Recovery Grant
- NC Auxiliary Power Unit Rebate
- Wilson, Edgecombe, Pitt and Nash retrofit program
- GRADE+ expansion to more counties.

Under the School Bus Retrofit Law (S.L. 2007-465) \$2.5 million is provided to retrofit school buses with priority given to level three emission control devices. Since this program began, all eligible counties have been contacted and better technologies identified. Ms. Hildebrandt then reviewed a map showing counties receiving funding from DAQ grants from 1995 through 2009. Urban counties received the highest number, with Wake County receiving the most (24).

In reviewing other efforts, Ms. Hildebrandt noted that the Clean Fuel Advanced Technology Grant and the DOE Clean Energy Award also offered grant incentives. She then concluded her report. Co-Chairman Atwater thanked Ms. Hildebrandt and called for Commission discussion.

Senator Albertson was recognized and asked prices for filters to reduce emissions. Ms. Hildebrandt said she could only answer the question if regarding a school bus. For a school bus, she said, costs for a emission filter would be roughly \$10,000 installed. In some cases, the costs could be as low as \$7,000.

Senator Bingham was recognized and asked if there were any federal interest to require John Deere and other companies to make mandatory NOX emission reductions for heavy equipment. Ms. Hildebrandt answered that there was a new program “in the works” that is scheduled to come out in August that would apply to all “new” equipment.

### **Report on climate initiatives within the Division of Air Quality of the Department of Environment and Natural Resources**

Co-Chairman Atwater recognized Ms. Sushma Masemore, Supervisor of the Allied Programs Branch, in DAQ. She thanked the Co-Chairman. Her report is part of the larger DAQ report and begins on Page 50.

Ms. Masemore began saying that the EPA was working on rules to reduce greenhouse emissions. One rule, she said, was the proposed Greenhouse Gas Tailoring Rule (GHG), for Title V facilities and other sources. Another recent action is the Senate Climate Bill, introduced on September 9, 2009, calling for the EPA to regulate large sources and administer emission reduction program and oversee a cap and trade program implemented through the Title V permit program.

The creation of an advisory group recommended restrictions on heavy duty vehicle idling and for the State to become a member of The Climate Registry.

Ms. Masemore then reviewed DENR’s “unified approach to address climate change.” Items of this plan include the Department’s Strategic Plan, participation in the Climate Change Steering Committee, a reduction in DENR’s energy and water usage, education and outreach. CoChairman Atwater called for questions and discussion.

Representative Harrison asked if the State planned to have similar emission goals as the Obama administration has set. Ms. Masemore said she did not know the answer. Senator Albertson asked if Ms. Masemore knew when new guidelines would be presented by the EPA. Ms. Masemore suggested that guidelines would be finalized “soon.” Other rules are expected to be finalized by March of 2010.

### **Commission discussion**

Co-Chairman Gibson was recognized. He complimented Mr. Overcash for his hard work. The Co-Chairman then asked if it was a fair assumption that “we” are headed the right way with regard to reductions. Mr. Overcash answered “yes sir.” Co-Chairman Gibson followed up asking if there was anything “we” (ERC) needed to do to assist in making “air attainment goals regardless.” Mr. Overcash said his Division was “communicating this out.” With little more discussion, Co-Chairman Atwater thanked the Commission for their hard work and adjourned the meeting at 11:21 a.m.

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Co-Chair Robert Atwater  
Presiding

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Co-Chair Dan Clodfelter

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Jessica Kozma Bennett  
Commission Clerk

**Approved at February 18, 2010 meeting.**